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October 6, 2003

VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Implementation of the Federal Communications Commission's Triennial  
Review Order (Nine-month Proceeding)*  
Docket No. 03-00491

Dear Chairman Tate:

Enclosed are the original and fourteen copies of CompSouth's Comments in response to the Notice of Status Conference and Filing dated October 1, 2003. Like BellSouth, CompSouth has proposed to address the issue of market definition in the context of the parties' direct testimony and after the completion of discovery. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Henry Walker  
Boult Cummings Conners Berry, PLC  
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Nashville, TN  
615-252-2363

HW:pp  
Enclosure

507565

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**October 6, 2003**

<i>IN RE: Implementation of the Federal</i>	)	
<i>Communications Commission's Triennial</i>	)	<i>Docket No. 03-00491</i>
<i>Review Order – 9 Month Proceeding –</i>	)	
<i>Switching</i>	)	

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**Comments on Behalf of CompSouth**

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The Competitive Carriers of the Southeast ("CompSouth") file these Comments in response to the October 1, 2003 Notice issued by the Hearing Officer in the above-styled docket.

The scope of these comments is stated by the Notice, which identified the issue to be addressed as relating to mass markets switching, and declared:

(T)he FCC's Triennial Review Order seems to indicate that the relevant geographic market should be defined prior to beginning the impairment analysis. Accordingly, the Parties are directed to file comments with the TRA on this question . . .

As the Notice correctly stated, the parties have previously urged that discovery is needed prior to the presentation of evidence or argument pertaining to the issues in the case.

Accordingly, the parties have proposed to address the issue of market definition in the context of their direct testimony after the completion of discovery.

CompSouth believes that the Authority should not attempt to define the appropriate market until discovery is completed, evidence presented and a hearing is held regarding all issues in the case. CompSouth further believes that the process proposed is completely consistent with the requirements of the Triennial Review Order ("TRO") and would provide the most appropriate record upon which the Authority can base its ultimate decisions in this proceeding.

The FCC has set forth certain parameters as to how the states must determine the proper market definition:

The triggers and analysis described below must be applied on a granular basis to each identifiable market. State commissions must first define the markets in which they will evaluate impairment by determining the relevant geographic area to include in each market. State commissions have discretion to determine the contours of each market, but they may not define the market as encompassing the entire state. Rather, state commissions must define each market on a granular level, and in doing so they must take into consideration the locations of customers actually being served (if any) by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets economically and efficiently using currently available technologies. While a more granular analysis is generally preferable, states should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market. State commissions should consider how competitors' ability to use self-provisioned switches or switches provided by a third-party wholesaler to serve various groups of customers varies geographically and should attempt to distinguish among markets where different findings of impairment are likely. The state commission must use the same market definitions for all of its analysis. (Triennial, ¶ 495)

Given these parameters, it is clear, for several reasons, that the Authority's determination as to the definition of a market should only be made *after* it has received and reviewed all evidence and argument in this matter:

First, nothing in the TRO requires the Authority to make a ruling on the definition of "geographic market" before it has heard all of the evidence. While the FCC states that the "State commissions must first define the markets in which they will evaluate impairment", this only states the obvious: that before any state commission can determine whether there is impairment in a market, the state commission must first define what that market is. Nothing prevents a state commission from hearing all the evidence, and then making its decisions. More importantly, the Authority must have all the evidence it needs to make the critical determination of what an appropriate market is, or it will have no way of knowing the consequences of the determination it makes. The TRO simply does not mandate, require, or otherwise direct that the question of

market definition be determined separately from the same proceeding in which the Authority addresses the issues of impairment.

Second, the market definition must be the same in the trigger analysis as it is in the economic and operational analysis. Thus evidence of economic and operational analysis must be considered before a definition of "geographic market" can be derived. It would make little sense, if not violate the TRO, to artificially separate the "market" analysis from the economic and operational analysis. In fact, the TRO clearly directs, that in determining the appropriate definition of the relevant geographic market, the Authority must consider facts that will only be collected in connection with the development of the record to be used in determining the impairment issue. As the FCC stated:

We require state commissions to define each geographic market on a granular level and direct them to take into consideration the locations of customers actually being served by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets economically and efficiently using currently available technologies.

Triennial at fn.1536.

Obviously in determining the relevant geographic markets in Tennessee, the Authority has been instructed to consider things that will only be available after the record in this proceeding has been developed through discovery and testimony.

Third, bifurcating the nine-month switching proceeding would not streamline it. By compressing the "market" analysis into a period even shorter than that available to the Authority, discovery and case preparation, the submission of evidence, the preparation and submission of briefs, and the rendering of the decision itself, which could result in rehearing and other procedures, makes the "back end," as well as the "front-end," of the nine-month period, more frenetic and rushed, for the Authority as well as the parties.

The bifurcation of the decision making process described in the Order does not mandate any particular procedural process. It merely describes the logical decision-making process in which state commissions are to engage. The TRO itself imposes no requirement that the process of gathering and presenting evidence be bifurcated into two steps, and, indeed, an attempt to separate the discovery and presentation of evidence in this fashion is likely to present substantial problems.

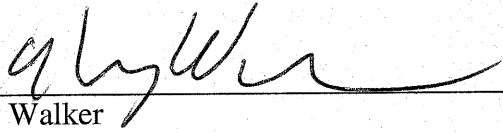
CompSouth believes that the matters relevant to the entire impairment analysis cannot be succinctly segregated from the evidence and matters relevant solely to market definition at this stage of the case. Rather than saving the time and resources of the TRA, attempting such a bifurcation will more likely create confusion and limit the ability of the parties to present a cogent, organized case and limit the Authority's ability to consider these issues in a comprehensive manner.

Thus, given the extensive factual record that the FCC has required that the states analyze before defining the market, the context of the TRO itself makes clear that the ruling on the appropriate definition requires the totality of the evidence, and thus should only be made at the end of the case, when the Authority also rules on impairment.

For the foregoing reasons, CompSouth respectfully urges the TRA to proceed in the manner previously set forth in the partys' joint proposal.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

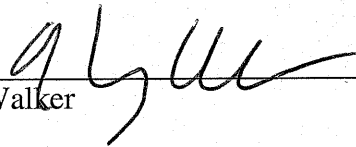
By:   
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Counsel for Competitive Carriers of the South, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 6, 2003, a copy of the foregoing document was serviced on the parties of record, via US mail:

Guy Hicks  
BellSouth Telecommunications, Inc.  
333 Commerce St., Suite 2101  
Nashville, TN 37201

Henry Walker

A handwritten signature in black ink, appearing to read 'H Walker', is written over a horizontal line.